

Federal Communications Commission

DA 99-675

FCC MAIL SECTION

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DISPATCHED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

| | | |
|---------------------------------|---|----------------------|
| Amendment of Section 73.202(b), |) | |
| Table of Allotments, |) | |
| FM Broadcast Stations. |) | MM Docket No. 97-227 |
| (Wasilla, Anchorage and |) | RM-9159 |
| Sterling, Alaska) |) | RM-9229 |
| |) | RM-9230 |

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 31, 1999

Released: April 9, 1999

By the Chief, Allocations Branch:

1. The Commission considers herein the Notice of Proposed Rule Making, 12 FCC Rcd 17497 (1997), issued in response to a petition filed on behalf of KMBQ Corporation ("KMBQ") proposing the allotment of FM Channel 273C2 to Wasilla, Alaska, (pop. 4,048),¹ as that community's second local FM transmission service.² KMBQ filed supporting comments in response to the Notice. Pioneer Broadcasting Company, Inc. (RM-9229) ("Pioneer")³ and Chester P. Coleman (RM-9230) ("Coleman")⁴ each filed a counterproposal.⁵ KMBQ filed responsive comments. Additionally, Moore submitted supplemental comments.⁶

2. Pioneer counterproposed the substitution of Channel 276C1 for Channel 276C2 at Anchorage and modification of the facilities for Station KMXS(FM), at its existing site at

¹Population figures cited herein were taken from the 1990 U.S. Census.

²As stated in the Notice, KMBQ is the licensee of Station KMBQ(FM), Channel 259C1, Wasilla.

³At the time this proposal was filed, Pioneer was the licensee of radio Station KMXS(FM), Channel 276C2, Anchorage. However, we note that an assignment of the license to Morris Communications Corporation ("Morris") (File No. BALH-980804GM) was subsequently granted October 15, 1998, and consummated December 1, 1998.

⁴Coleman is the permittee for proposed Station KADX(FM), Channel 234C2, Houston, Alaska.

⁵Public Notice of the counterproposals was given on February 24, 1998, Report No. 2257.

⁶These comments, although not accompanied by a motion to accept, merely reaffirm Moore's continuing interest in pursuing the modification proposal initiated by Pioneer. Therefore, no prejudice will result from the acceptance of Morris' supplemental comments.

coordinates 61-08-13 NL and 149-50-06 WL.⁷ However, in order to accommodate KMBQ's desire to provide an additional FM service at Wasilla, Pioneer proposed the allotment of Channel 265C2 to that community instead of Channel 273C2, at a restricted site located approximately 8 kilometers northeast of the community at coordinates 61-38-05 NL and 149-22-14 WL.

3. Coleman counterproposed the allotment of Channel 273C2 to Sterling, Alaska, (pop. 3,802) a census designated place, as that community's first local aural transmission service. In support of his proposal Coleman asserts that as Sterling is approximately the same size as Wasilla, the allotment of a first local aural transmission service at that community rather than a second local aural transmission service at Wasilla would better serve the goals of Section 307(b) of the Communications Act of 1934, as amended. If Channel 273C2 is allotted to Sterling as requested, Coleman stated an intention to file an application to construct a station promptly if his application is granted.

4. In response to Pioneer's counterproposal KMBQ avers that while it is not opposed to an upgrade for Station KMXS(FM) at Anchorage, it notes that Pioneer has not maximized its existing Class C2 facilities.⁸ Additionally, KMBQ remarks that Pioneer's proposal would have an adverse effect on the reasonable prospect for the implementation of a second local transmission service at Wasilla, as it would require the construction of a new transmitter site for Channel 265C2. However, KMBQ asserts that there are no existing FM transmitter sites to accommodate a Channel 265C2 operation at Wasilla that meets the required minimum distances to existing stations and allotments. Further, KMBQ states that construction costs for a new transmitter site to accommodate Channel 265C2 would be an extreme financial burden given the limited availability of useable land, roads and electric power in the region. Additionally, KMBQ avers that considering the economic size and population of the market, the greatest potential for the effective realization of a new broadcast operation would be to co-locate it with existing facilities.

5. KMBQ asserts that the contour protection provisions of Section 73.215 would not be available to it on Channel 265C2 from Station KMBQ(FM)'s existing transmitter site as it would be short-spaced to second adjacent Channel 267C2, licensed to Station KGOT(FM), Anchorage. In this regard, KMBQ comments that its licensed site is within the 60 dBu F(50,50) contour of Station KGOT(FM), as calculated assuming maximum Class C2 facilities

⁷Station KMXS(FM), formerly KXDZ(FM), was modified previously to specify operation on Channel 276C1 in the context of MM Docket No. 93-139, 8 FCC Rcd 7981 (1993), 58 FR 62288, November 26, 1993. Although the FM Table of Allotments currently reflects the allotment of Channel 276C1 at Anchorage, according to Commission records, the allotment was downgraded to Channel 276C2 at the licensee's request on August 26, 1994 (see File No. BPH-931229IA). Therefore, in light of the mutually exclusive proposal to allot Channel 273C2 to Wasilla, the licensee of Station KMXS(FM) must now proceed via the rule making process if it is to regain Class C1 status on Channel 276.

⁸KMBQ reports that Station KMXS(FM) operates on Channel 276C2 with 27 kW at -55 meters HAAT.

per Section 73.215(b)(ii).

6. As an alternative to Pioneer's proposal, KMBQ suggests that consideration of Channel 273C2 be retained at Wasilla, and that Channel 277C1 be allotted to Anchorage instead of Channel 276C1. That proposal, according to KMBQ, would still afford Pioneer an opportunity to upgrade Station KMXS(FM) to a Class C1 channel and would permit Channel 273C2 to be allotted at Wasilla and utilized from Station KMBQ(FM)'s fully-spaced existing FM transmitter site.

7. With regard to the feasibility of Channel 277C1, KMBQ claims that it can be allotted to Anchorage consistent with Section 73.207(b) if the licensed site of Station KRUA(FM) Channel 201A, Anchorage, at coordinates 61-20-11 NL and 149-30-43 WL is employed as the allotment reference. KMBQ acknowledges that the use of Channel 277C1 at the licensed site of Station KMXS(FM) at coordinates 61-08-13 NL and 149-50-06 WL would result in a 19.3 kilometer short-spacing to Station KWVV(FM), Channel 278C, Homer, Alaska. However, KMBQ states that if Pioneer were to make a Section 73.215 contour protection election, it could operate a Class C1, 100 kW facility on Channel 277C1 from its existing site without causing prohibited overlap to Station KWVV(FM).⁹ KMBQ believes that its proposal would negate the necessity to construct a new transmitter site at Anchorage to accommodate Pioneer's upgrade proposal, or at Wasilla to accommodate KMBQ's desire to operate on Channel 273C2 from its existing site.

8. As to Coleman's counterproposal, KMBQ advises that there are at least eleven other Class C2 channels that could be allotted to Sterling, Alaska, that would not preclude the allotment of a second local transmission service to Wasilla or the substitution of a Class C1 channel for Channel 276C2 at Anchorage.

9. At the outset, we will reject KMBQ's suggested substitution of Channel 277C1 for requested Channel 276C1 at Anchorage in order to accommodate the requested allotment of Channel 273C2 at Wasilla. That proposal cannot prevail for several reasons. First, is the suggested use of a directional antenna for Channel 277C1 at the existing site of Station KMXS(FM) to avoid interference to Station KWVV-FM, Homer, Alaska. Second, is the suggested use of the existing site of Station KRUA(FM), Channel 201A, Anchorage, as the allotment reference point for Channel 277C1. The Commission has clearly stated that use of the contour protection method, while permitted at the application stage, is not intended to cure short spacings at the allotment level. See Report and Order, MM Docket No. 87-121, 4 FCC Red 1681 (1989). Unlike the application process, which authorizes the use of contour protection methods, the allotment proposal must comply with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules. Moreover, the licensee of Station KMXS(FM) has not indicated an interest in Channel 277C1. Additionally, for

⁹KMBQ's engineering statement also notes that there are several other existing transmitter sites at which Station KMXS(FM) could operate on Channel 277C1 as a fully-spaced or as a short-spaced station.

allotment purposes, KMBQ's request would require Station KMXS(FM) to co-locate its transmitter with Station KRUA(FM) without the prior consent of Pioneer.¹⁰ Such a relocation would contravene established Commission policy which does not require the involuntary change of an existing station's transmitter to accommodate a proposal elsewhere, in the absence of a strong and compelling public interest showing to justify such action. See Claremore, Oklahoma, et al., 3 FCC Rcd 4037 (1988), rev. denied 66 RR 2d 225 (1989). Moreover, a relocation even with the consent of Station KMXS(FM) would require a willingness to reimburse Pioneer for the reasonable costs associated with the alternate proposal. See Hazlehurst, Utica and Vicksburg, MS, 11 FCC Rcd 2353, 2354 (1996). No reimbursement pledge was given in this instance.

10. As to KMBQ's request that Channel 273C2 be allotted for use at its existing transmitter site, the addition of a new allotment at a community requires that the channel be made available for competing applications. Therefore, KMBQ would have no greater rights to apply for a new channel allotment at Wasilla than other potential applicants. See Bay Shore, New York, 50 FR 10768, March 18, 1985, app. for rev. den. 2 FCC Rcd 1293 (1987); recon. dismissed 3 FCC Rcd 876 (1988).

11. Insofar as KMBQ has expressed its preference for Channel 273C2, it is well established that the Commission generally considers channels of the same class to be equivalent for allotment purposes, provided they comply with the Commission's minimum distance separation requirements and provide a city grade (70 dBu) signal over the entire community of license. See Randolph and Brandon, Vermont, 6 FCC Rcd 1760 (1990). Moreover, channels of the same class are considered to be equivalent unless it has been demonstrated that a station cannot be constructed on a specific channel for reasons such as aeronautical hazards or environmental effects. See Vero Beach, Florida, 3 FCC Rcd 1049 (1988), rev. denied, 4 FCC Rcd 2184, 2185 (1989). Although KMBQ has stated that alternate sites may be impractical due to the alleged limited availability of useable land in the area, no showing has been made to substantiate such claim. In any event, it is not until the application level that the availability of exact sites is known. See Bemidji and Red Lake, Minnesota, 10 FCC Rcd 4926 (1995).

12. Based upon the information presented, and in the interest of accommodating as many proposals as possible, we will allot Channel 265C2 to Wasilla, Alaska, as that community's second local FM service. Additionally, we will substitute Channel 276C1 for Channel 276C2 at Anchorage, as requested by Pioneer, and modify the facilities for Station KMXS(FM) as requested. We have also determined the availability of alternate channels for allotment to Sterling, Alaska. Among those available, we have selected Channel 231C2 for

¹⁰The distance between Station KRUA(FM)'s existing transmitter site at coordinates 61-20-11 NL and 149-30-43 WL and Station KWVV-FM, Channel 278C, Homer, Alaska, at coordinates 59-41-03 NL and 151-37-51 WL is 218 kilometers (135 miles) whereas a minimum distance of 209 kilometers (130 miles) is required. Conversely, from the licensed site of Station KMXS(FM) at coordinates 61-08-13 NL and 149-50-06 WL, the distance between Channel 277C1 and Station KWVV-FM is reduced to 189.7 kilometers (118 miles).

allotment to that community.

13. Channel 265C2 can be allotted to Wasilla consistent with the minimum distance separation requirements of Section 73.207(b)(2) of the Commission's Rules provided the transmitter site therefor is sited at least 7 kilometers (4.3 miles) northeast of the community at coordinates 61-38-05 NL and 149-22-14 WL. Channel 276C1 can be allotted to Anchorage at the licensed site of Station KMXS(FM) at coordinates 61-08-13 NL and 149-50-06 WL. Channel 231C2 can be allotted to Sterling, Alaska, without a site restriction at coordinates 60-32-18 NL and 150-45-30 WL.

14. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective May 24, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

| <u>City</u> | <u>Channel No.</u> |
|-------------------|--|
| Anchorage, Alaska | 225C, 229C2, 247C1, 251C1, 255C1, 263C2, 267C2, 271C3, 276C1, ¹¹ 281C1, 287C1, 293C, 298C1 |
| Sterling, Alaska | 231C2 |
| Wasilla, Alaska | 265C2 |

15. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of Morris Communications Corporation (File No. BALH-980804GM) for Station KMXS(FM), Anchorage, Alaska, IS MODIFIED to specify operation on Channel 276C1 in lieu of Channel 276C2, subject to the following conditions:

¹¹Although not reflected in the current Table of FM Allotments, Channel 276C1 at Anchorage was downgraded previously to Channel 276C2 pursuant to a grant of application File No. BLH-931229IA.

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

16. Pursuant to Commission Rule Section 1.1104(3)(l), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Morris Communications Corporation, licensee of Station KMXS(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade at Anchorage.

17. IT IS FURTHER ORDERED, That the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Order to the following: Morris Communications Corporation, 725 Broad Street, P.O. Box 936, Augusta, Georgia 30903.

18. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

19. A filing window for Channel 231C2 at Sterling, Alaska, and for Channel 265C2 at Wasilla, Alaska, will not be opened at this time. Instead, the issue of opening a filing window for those channels will be addressed by the Commission in a subsequent Order.

20. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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